



Report to the Auburn City Council

Action Item

4

Agenda Item No.

City Manager's Approval

To: Mayor and City Council Members
From: Jack Warren, Director of Public Works/City Engineer
By: Bernie Schroeder, Engineering Division Manager *BS*
Date: August 24, 2009
Subject: Consultant Agreement for WWTP Improvements Project – Nexgen Utility Management

The Issue

Shall the Council authorize a consultant agreement to Nexgen Utility Management for construction support for the 2009 WWTP Improvements Project?

Conclusions and Recommendation

Staff recommends that the City Council, by **RESOLUTION**, authorizes the Director of Public Works to execute the consultant agreement with Nexgen Utility Management for construction support for the 2009 WWTP Improvements Project and associated wastewater treatment and operations tasks.

Background

Dan Rich is a principal for Nexgen Utility Management and has been the City's wastewater consultant throughout the design of the 2009 Wastewater Treatment Improvements Project. This project will require a full time project manager and inspector on-site while the construction activities are underway. Due to City layoffs, we are not currently staffed sufficiently to handle the additional workload of the WWTP Improvements Project. Mr. Rich is very familiar with our treatment plant and is considered vital to ensuring that the improvements are constructed in accordance to the design without compromising the daily operations of the treatment process. In addition to these services we believe there will be opportunity for Nexgen to complete other wastewater related tasks while they are on-site. Specifically, this consultant agreement is for professional services related to the construction phase of the 2009 WWTP Improvements Project, preparation of the Report of Waste Discharge for permit renewal and evaluation of the oxidation ditch aeration system.

Staff is also recommending under a separate proposal for Eco:logic to supplement Nexgen's work however their work will include only items specific to the engineering design and special inspections for the electrical and reinforcing steel. Nexgen's proposed work scope relating to this project is primarily construction oversight and inspection services for all of the improvements.

Detailed descriptions of each task are included as part of the professional service agreement. The total cost of the professional service agreement is \$499,260.

Council is anticipated to award the construction contract to GSE Construction Company on tonight's Council meeting for the 2009 WWTP Improvements Project.

Additional Information

The estimated duration for construction of this project is 13 months.

Alternatives Available to Council; Implications of Alternatives

1. Proceed with the staff recommendation.
2. Do not proceed with staff recommendation.

Fiscal Impact

The cost to complete the three tasks incorporated into the agreement total \$499,260 which was included in the preparation of the project cost for the 2009 WWTP Improvements Project as approved in the 2009-10 City of Auburn Operating Budget in the Sewer Enterprise Fund.

Funding for this project has been made available from the recent sale of Wastewater Treatment Facility Revenue Bonds, which includes a \$7.65 million deposit to the Wastewater Facility Upgrade project fund. Amounts available in the project fund will cover the cost of construction, construction engineering, inspection and administration as well as anticipated capital capacity needs.

Attachments: Consultant Agreement
 Resolution

PROFESSIONAL SERVICES AGREEMENT
(City of Auburn / *NexGen Utility Management.*)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and **NexGen Utility Management, Inc. a California, Corporation** ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant for the Wastewater Consulting for WWTP Improvement Project 2009, NPDES Permit Renewal, and System Evaluation of the Oxidation Ditch.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's June 15, 2009 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's June 15, 2009 fee schedule to City attached hereto as Exhibit Band incorporated herein by this reference.
- 3.3 "Commencement Date": August 25, 2009.
- 3.4 "Expiration Date": August 25, 2011.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City

shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Four Hundred Ninety Nine Two Hundred Twenty Six Dollars (\$499,260) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Dan Rich** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not

enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
 - 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x____
Facsimile: (530) 823-4216

If to Consultant:

NexGen Utility Management
C/O Dan Rich
4010 Lennane Dr
Sacramento, CA 95834
Telephone: (916) 564-8005
Facsimile: (888) 820-8880

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono, Levin & Rozell, APC
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024
Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.

18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

18.4 The waiver by City or Consultant of any breach of any term, covenant or

condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written

agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

19 PREVAILING WAGES

19.1 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is subject to prevailing wage law, including, but not limited to, the following:

19.1.1 The Consultant shall pay the prevailing wage rates for all work performed under the Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Consultant shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Consultant shall forfeit as a penalty to City \$50.00 or any greater penalty provided in the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the Agreement employed in the execution of the work by Consultant or by any subcontractor of Consultant in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant.

19.1.2 Consultant shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Consultant is responsible for compliance with Section 1777.5 by all of its subcontractors.

19.1.3 Pursuant to Labor Code § 1776, Consultant and any subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Consultant in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code §§ 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records enumerated under subdivision (a) shall be

certified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.

- 19.2 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code Sections 1810 and 1813, as well as California nondiscrimination laws, as follows:

- 19.2.1 Consultant shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Section 12940 of the Government Code. Pursuant to the provisions of the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Consultant's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Consultant shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by Consultant or by any Subcontractor of Consultant, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the provisions of the Labor Code.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

"Consultant"
NexGen Utility Management

By _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Date: _____

By: _____

Professional Services Agreement
City of Auburn / NexGen Utility Management

Name, Level of Officer e.g., Vice President

Date: _____

Attest:

By _____
Deputy City Clerk

Date: _____

Approved as to Form:

By _____
City Attorney

Date: _____

EXHIBIT A SCOPE OF WORK

Scope of Work Construction Management and Inspection Services For the City of Auburn UV System Upgrade

Task 1- Onsite Inspection, Construction Management and Post-Construction for the UV System Upgrade

Consultant will provide construction management, resident engineering, and inspection thru the course of the project. Consultant shall not supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

Task 1.1. Pre-Construction Conference Consultant will conduct a Pre-Construction Conference prior to commencement of work at the site. The preconstruction conference will review jobsite safety, roles and responsibilities, submittal, request for information, and change order procedures.

Task 1.2. Construction Management, Resident Engineering and On-site Inspection Consultant will provide the construction management and resident engineering activities to provide the City a greater degree of confidence that the completed Work will conform to the Contract Documents. Subtasks include:

- *Recommendations with Respect to Defective Work.* Consultant will recommend to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Consultant believes that such work will not produce a completed Project that conforms generally to the Contract Documents.
- *Clarifications and Interpretations.* Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by City.
- *Change Orders.* Consultant may recommend Change Orders to City, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.
- *Submittal Database.* Consultant will establish a database to track submittals and the status of each. The submittals will be logged and reviewed by the construction manager for completeness, then immediately forwarded to the design engineer for review.
- *Shop Drawings and Samples.* Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment

choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

- *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- *Disagreements between City and Contractor.* Consultant will, if requested by City, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- *Contractor Billing.* Consultant will request monthly progress payment estimates from the contractor, detailed in terms of the schedule of values and tied to a cost loaded schedule as required by the contract documents. Once reviewed and accepted, the payment request will be forwarded to the City.
- *Construction Site Safety.* Consultant will review construction site safety and relay the information to City staff. Meetings will be held, as necessary, at the project site with the Contractor and with selected City personnel to review the Contractor's safety procedures and discuss any safety issues. The Consultant will prepare agendas for the progress meetings.
- *Onsite Inspection.* Consultant will photo-document existing conditions, monitor and inspect the progress of the work, and review Contractor's documentation of as-built conditions.
- *Coordinate surveying, materials testing, and specialty materials testing.* Consultant will determine the need for and coordinate the surveyors, materials testing for earthwork, and concrete testing. The actual surveying and testing will be others, contracted directly to the city.
- *Inspection Logs.* Consultant will complete daily inspection logs of all work on the project. Consultant will review labor compliance and maintain project records.

Task 1.3. Materials Testing Consultant will coordinate earthwork inspections (soil compaction testing, testing of stockpiled soils) and specialty inspections (concrete break strength and batch confirmation, specialty coating inspections). This work will be completed by Holdredge & Kull as a subconsultant to Consultant.

Task 1.4. Surveying Consultant will coordinate construction surveying control for the site. Andregg Geometrics will complete the surveying as a subconsultant to Consultant.

Task 1.5. Geotechnical Assistance Consultant will coordinate required geotechnical assessments and inspections with the project's geotechnical engineer. Gularti Associates will complete any geotechnical assistance as a subconsultant to Consultant.

Task 1.6. Testing and Operations Assistance Consultant will supervise facilities acceptance testing and start-up. During the initial testing phase of the project, the Consultant will play a lead role in the testing of every part of the treatment facilities. The Contractor's schedule will be used to coordinate the start-up operations between the Contractor, Design Engineer, City operations staff and Consultant. Comprehensive testing of treatment processes and equipment will be necessary. Consultant will be involved in the commissioning of each individual sub-system into the WWTP's operational scheme, including the new UV disinfection system and the new secondary clarifier. Consultant will also provide final testing and inspection of staged improvements and will attend all O&M demonstrations.

Consultant will provide post construction services as specifically stated below:

Task 1.7. Compilation of Record Drawings Consultant shall compile and submit to the design engineer all confirmed changes documented by the contractor during construction needed for the preparation of record drawings.

Task 1.8. Operations and Maintenance Manual Review Consultant will analyze and recommend changes to the draft O&M manual prepared by the design engineer.

Task 1.9. Substantial Completion Consultant will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with City and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of City, Consultant considers the Work substantially complete, Consultant will notify City and Contractor.

Consultant will also conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely. Consultant will prepare a final construction report which will include all database summary logs of the construction and a summary of the construction activities.

Task 2- NPDES Permit Renewal Activities

Consultant will prepare a standard Report of Waste Discharge (ROWD) for the current WWTP that will include the approved upgrades currently under construction. In addition to completed forms, the ROWD will contain a Technical Support Document which will contain pertinent data and updated analyses including: influent and effluent wastewater characterization, hydraulic balance calculations and a regulatory compliance assessment. The final document will be forwarded to the City for submission to the Regional Board. Fees for the ROWD application will be paid by the City.

Negotiations with the Regional Board are expected after submittal of the ROWD. This scope assumes that negotiations will include clarification of technical information in the ROWD and submittal of

supplemental information to complement the ROWD. This task assumes that the revisions to the ROWD will not be contested and therefore major additional analysis or additional field studies will not be required.

Consultant will assist the City in reviewing and preparing written comments to the draft and tentative revised Waste Discharge Requirements (WDR). It is assumed, for budgeting purposes, that comments will be minor and will not require additional detailed technical analysis.

Major elements of the ROWD include the following:

- Completed and signed NPDES Applications:
 - Form 200 with its associated Technical Support Document.
 - EPA Form 1.
 - EPA Form 2A:
 - Parts A, B, and C covering general information about the City's wastewater facilities.
 - Part D – Expanded Effluent Testing Data.
 - Part E – Toxicity Testing Data
 - Part F – Industrial User Discharges and RCRA/CERCLA Wastes. This includes wastes from any remedial activity (e.g. gas station tank clean-up operations in town discharging to the City collection system).
- Site map and schematic of the facility
- Description of plans for growth or expansion of facilities, or other modifications planned for the next 5 years
- Anti-Degradation Analysis for new or expanding discharges (not applicable for Auburn since it is not requesting additional flows into the creek)
- California Toxics Rule / National Toxics Rule analyses for effluent and receiving water
- Receiving Water Information
 - Low flow data (7Q10 and 1 Q10)
 - Evaluation of background constituent concentrations to determine effluent constituents for which dilution may be needed.
- Upstream and downstream receiving water and effluent hardness data
- Locations of nearest downstream domestic, industrial, and irrigation water diversions
- Summaries of applicable water quality studies (studies not included in this scope of services):
 - Dilution studies
 - Mixing zone studies
 - Water effect ratio studies
 - Thermal plan exemption studies
 - Reclamation and regionalization studies

- Salinity
 - Electrical conductivity of the City's water supply
 - Plans and progress for salinity control for the wastewater utility
- Sludge Management Plan
 - Description of onsite and offsite solids and sludge treatment and disposal methods implemented
 - Disposal method for all solids and sludge produced
 - Information on responsible parties for beneficial reuse per Part 503 Regulations (if applicable).

The completion of the ROWD and expected negotiations with the Regional Board have been divided into the following major tasks and budgets. It is intended to complete a majority of these tasks while onsite for the construction project.

Task 3- Evaluation of Oxidation Ditch Aeration System

The WWTP uses an oxidation ditch activated sludge system for secondary treatment. The system uses 2- 50 horsepower brush rotors to aerate the wastewater. Previous studies and observations by the City have indicated that the rotors may limit capacity of the WWTP. New permit requirements expected in the next NPDES permit will require the City to provide additional aeration for completion nitrification of the wastewater. The City is currently collecting data to characterize the specific loading conditions on the oxidation ditch. This data will be used to calculate the required capacity of the aeration system. Consultant will determine what improvements are necessary (if any).

Major tasks include:

- Review sampling results and determine current and design loading conditions
- Calculate aeration capacity at design conditions
- Review supplemental aeration equipment
- Prepare technical memo summarizing results.

It is intended to complete a majority of these tasks while onsite for the construction project.

EXHIBIT B APPROVED FEE SCHEDULE

Task 1: Onsite Inspection, Construction Management and Post-Construction for the UV System Upgrade

Task 1 Budget The budget for construction management and inspection provided below. The budget was based on a 13 month project construction and a diligent contractor. The level of effort required may be revised by the City as the project proceeds. Because Task 1 is expected to be completed at the same time as Task 2 (Report of Waste Discharge) and Task 3 (Aeration), the budget has been reduced equal to the amount of those tasks to reflect the expected efficiencies with completing 3 projects at the same time. The lower portion of the table should be used for the Task 1 budget.

Task	Billing Rate (\$/hr)	Nexgen Staff Hours				Total Hours hrs	Labor Cost \$	Expenses \$	Total Cost \$
		Project Manager	Project Engineer	Project Inspector	Electrical Engineer/Inspector				
1 Construction Phase Services		140	110	75	110				
1.1 Pre-Construction Conference		8		8	8	24	\$2,600	\$100	\$2,700
1.2 Construction Management/ Inspection		1200	800	1940	150	4090	\$418,000	\$2,000	\$420,000
Materials Testing (Earthwork and Concrete) by									
1.3 Holdredge & Kull (a)								\$20,000	\$20,000
1.4 Construction Staking (Andregg) (a)								\$10,000	\$10,000
1.5 Geotechnical Assistance (Gularti) (a)								\$10,000	\$10,000
1.6 Testing and Operations Assistance		50	24	100	40	214	\$21,540	\$200	\$21,740
Subtotal for Construction Phase Services		1258	824	2048	198	4328	\$442,140	\$42,300	\$484,440
Post Construction Services									
1.7 Compilation of Record Drawings		8	24	32	16	80	\$7,920	\$200	\$8,120
1.8 Operations and Maintenance Manual Review		8	12		12	32	\$3,760	\$200	\$3,960
1.9 Substantial Completion		8	8	8		24	\$2,600	\$200	\$2,800
Subtotal for Post Construction Services		24	44	40	28	136	\$14,280	\$600	\$14,880
Totals for 13 month Construction Duration		1282	868	2088	226	4464	\$456,420	\$42,900	\$499,320

Net Hours and Costs After Subtracting Out Hours for the ROWD and Aeration System Evaluation, Completed while Onsite:

1 Construction Phase Services									
1.1 Pre-Construction Conference		8		8	8	24	\$2,600	\$100	\$2,700
1.2 Construction Management/ Inspection		974	512	1940	150	3576	\$354,680	\$2,000	\$356,680
Materials Testing (Earthwork and Concrete) by									
1.3 Holdredge & Kull								\$20,000	\$20,000
1.4 Construction Staking (Andregg)								\$10,000	\$10,000
1.5 Geotechnical Assistance (Gularti)								\$10,000	\$10,000
1.6 Testing and Operations Assistance		50	24	100	40	214	\$21,540	\$200	\$21,740
Subtotal for Construction Phase Services		1032	536	2048	198	3814	\$378,820	\$42,300	\$421,120
Post Construction Services									
1.7 Compilation of Record Drawings		8	24	32	16	80	\$7,920	\$200	\$8,120
1.8 Operations and Maintenance Manual Review		8	12		12	32	\$3,760	\$200	\$3,960
1.9 Substantial Completion		8	8	8		24	\$2,600	\$200	\$2,800
Subtotal for Post Construction Services		24	44	40	28	136	\$14,280	\$600	\$14,880
Totals for 13 month Construction Duration		1056	580	2088	226	3950	\$393,100	\$42,900	\$436,000

(a) Testing, surveying, and geotechnical services are allowances and completed by subconsultants

Task 2: NPDES Permit Renewal Activity

		Nexgen Staff Hours			Total Hours hrs	Labor Cost \$	Expenses \$	Total Cost \$
Task	Billing Rate (\$/hr)	Project Manager 180	Project Engineer 140	Associate Engineer 120				
2 Report of Waste Discharge								
2.1 Collect and Review Data		4	16	16	36	\$4,880	\$200	\$5,080
2.2 Assess Effluent Data		40	32	24	96	\$14,560	\$500	\$15,060
2.3 Assess Receiving Water Data		24	24	20	68	\$10,080	\$400	\$10,480
2.4 Describe Facilities		8	0	8	16	\$2,400	\$100	\$2,500
2.5 Complete Forms		16	16	20	52	\$7,520	\$300	\$7,820
2.6 Meetings with Regional Board		40	0	0	40	\$7,200	\$300	\$7,500
Totals for Task 2.0 Report of Waste Discharge		92	88	88	268	\$46,640	\$1,800	\$48,440

Task 3: Evaluation of Oxidation Ditch Aeration System

		Nexgen Staff Hours			Total Hours hrs	Labor Cost \$	Expenses \$	Total Cost \$
Task	Billing Rate (\$/hr)	Project Manager 180	Project Engineer 140					
3 Aeration Assessment								
3.1 Review Sampling Results		4	8	12	\$1,840	\$100	\$1,940	
3.2 Calculate Aeration Capacity		8	8	16	\$2,560	\$100	\$2,660	
3.3 Review Supplemental Aeration Equipment		12	8	20	\$3,280	\$100	\$3,380	
3.4 Prepare Technical Memo		12	32	44	\$6,640	\$200	\$6,840	
Totals for Task 3.0 Aeration Assessment		36	56	92	\$14,320	\$500	\$14,820	

Total Task 1, 2 & 3: \$499,260

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RESOLUTION NO. 09-

RESOLUTION AUTHORIZING THE CONSULTANT AGREEMENT WITH NEXGEN
UTILITY MANAGEMENT FOR CONSTRUCTION SUPPORT FOR THE 2009 WWTP
IMRPOVEMENTS PROJECT.

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the
Director of Public Works to execute a consultant agreement with NEXGEN
Utility Management for Construction Support of the 2009 WWTP Improvements
Project.

A true and correct copy of each said consultant agreement is attached hereto
as Exhibit "A."

DATED: August 24, 2009

J.M. Holmes, Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
that the foregoing resolution was duly passed at a regular session meeting of
the City Council of the City of Auburn held on the 24th day of August 2009 by
the following vote on roll call:

Ayes:
Noes:
Absent:

Joseph G. R. Labrie, City Clerk